

**UNEMPLOYMENT COMPENSATION LAW
BEFORE 2ESB 6097 AND AS AMENDED BY 2ESB 6097
(CHAPTER __, LAWS OF 2003)**

	BEFORE 2ESB 6097	AS AMENDED BY 2ESB 6097
PREAMBLE		
Construction	RCW 50.01.010 – Directs that the Employment Security Act be liberally construed to reduce involuntary unemployment to the minimum.	Section 1 – Deletes direction that the Act be liberally construed. Effective – Immediately.
DEFINITIONS		
"Wages"	Defines "wages" as remuneration paid by an employer to an individual. Remuneration includes "the cash value of all compensation paid in any medium other than cash."	Section 2 -- Excludes income attributable to the exercise of stock options from "wages" for contribution purposes. Applicable – January 1, 2004.
COVERED EMPLOYMENT		
Service By Nonresident Aliens	RCW 50.04.206 – Excludes certain nonresident aliens who are temporarily in the United States to work.	Section 27 - In addition to exclusions in current law, excludes work by nonresident immigrants in the H-2A (agricultural guest worker) and H-2B (other guest worker) programs. Effective -- Immediately.

	BEFORE 2ESB 6097	AS AMENDED BY 2ESB 6097
BENEFITS - ELIGIBILITY		
Benefit Applications	RCW 50.20.140 – Specifies that claims must be filed in accordance with rules prescribed by the Commissioner.	<i>VETOED BY THE GOVERNOR</i> <i>Section 28</i> -- Requires the Employment Security Department to require claimants filing claims telephonically or electronically to provide additional proof of identity. <i>Effective</i> -- Immediately.
Continuing Eligibility/ Customary Trade Practices	RCW 50.20.010 – Requires claimants to be physically able to work, available for work, and actively seeking "suitable work." Claimants must search for work per customary trade practices and through other methods when directed by the commissioner.	Section 3 – Same as current law, except that, if a labor agreement or dispatch rules apply, customary trade practices must be in accordance with the applicable agreement or rules. Applicable - January 4, 2004.
Continuing Eligibility/ Part-Time Workers	RCW 50.20.100 – "Suitable work" is employment in an occupation in keeping with the individual's prior work experience, education, or training (unless such work is not available in the general area). In most circumstances, "suitable work" is full-time.	Section 12 – Defines a part-time worker is someone who earns wages in at least 40 weeks of the base year and does not earn wages in more than <u>17 hours</u> per week in <u>any weeks</u> of the base year. Section 13 -- Specifies that suitable work for part-time workers as work for <u>17 or fewer</u> hours per week. Applicable: January 2, 2005.

	BEFORE 2ESB 6097	AS AMENDED BY 2ESB 6097
Job Search Monitoring	<p>RCW 50.20.240 – Requires the Employment Security Department to monitor the job search efforts of persons who have received five or more weeks of benefits.</p>	<p>Section 10 – In addition to the requirements under current law, requires the Department to contract with employment security agencies in other states to ensure that out-of-state claimants in those states are actively engaged in searching for work in accordance with Washington job search requirements.</p> <p>Permits the Department to use certain electronic means to ensure that individuals are subject to job search monitoring, regardless of whether they reside in Washington or elsewhere.</p> <p>Provides that a claimant who fails to actively search for work loses benefits for weeks in which he or she was not in compliance, and requires the claimant to repay such benefits.</p> <p>Effective – January 4, 2004.</p>

	BEFORE 2ESB 6097	AS AMENDED BY 2ESB 6097
BENEFITS - DISQUALIFICATION		
Voluntary Quits	RCW 50.20.050 – Disqualifies a claimant from receiving benefits for voluntarily quitting work without good cause. Specifies that the following voluntary quits do not disqualify a claimant from receiving benefits:	Section 4 – Beginning January 4, 2004, limits voluntary quits that do not disqualify an individual from receiving benefits to the following:
	<ul style="list-style-type: none"> Leaving to accept other work 	<ul style="list-style-type: none"> Leaving to accept other work (same as current law).
	<ul style="list-style-type: none"> Illness or disability, after taking precautions to preserve employment status with the employer 	<ul style="list-style-type: none"> Illness or disability (modifies current law to require that claimant not be entitled to reinstatement).
	<ul style="list-style-type: none"> Leaving work to relocate for the spouse's employer-initiated mandatory transfer 	<ul style="list-style-type: none"> Quit to follow spouse (modifies current law to limit to mandatory military transfers).
	<ul style="list-style-type: none"> Domestic violence 	<ul style="list-style-type: none"> Domestic violence (same as current law).
	<ul style="list-style-type: none"> Other work related factors determined by the Commissioner, such as risk to health or safety, ability to perform the work, certain changes in travel time, substantial involuntary deterioration of the work factor 	<p>Adds the following:</p> <ul style="list-style-type: none"> Reduction of 25% or more in compensation or hours Change in worksite causes increased distance or difficulty of travel Deterioration of worksite safety Illegal activities in the worksite Change in usual work that violates individual's religious convictions or sincere beliefs <p>Deletes "other work related factors determined by the Commissioner."</p>

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Misconduct	<p>RCW 50.04.293 – Defines "misconduct" as an act or failure to act in willful disregard of the employer's interest where the effect is to harm the employer's business.</p> <p>RCW 50.20.060 – If discharged for misconduct, the individual is disqualified for 7 weeks and until he or she earns 7 times his or her weekly benefit amount.</p> <p>RCW 50.20.065 – If discharged for a felony or gross misdemeanor, the individual loses his or her wage credits from that employment.</p>	<p>Section 6 – Defines "misconduct" as willful or wanton disregard of the employer's or another employee's rights, deliberate violations or disregard of standards of behavior, carelessness or negligence that causes or would likely cause serious bodily harm to the employer or another employee, or carelessness or negligence that shows an intentional or substantial disregard of the employer's interest.</p> <p>Defines "gross misconduct" as a criminal act in connection with an individual's work, or conduct that demonstrates a flagrant and wanton disregard for the employer's or another employee's rights.</p> <p>Section 9 – Provides that an individual who is discharged for misconduct is disqualified for 10 weeks and until he or she earns 10 times his or her weekly benefit amount.</p> <p>Provides that an individual who is discharged for gross misconduct has his or her wage credits based on that employment or 680 hours of wage credits, whichever is greater, cancelled.</p> <p>Applicable – January 4, 2004.</p>

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BENEFITS - AMOUNT & DURATION		
Maximum Weekly Benefit Amount	<p>RCW 50.20.120 - .125 – Provides that the maximum weekly benefit amount (WBA) is 70% of the average weekly wage, except that:</p> <ul style="list-style-type: none"> ■ From July 1, 2002, through June 30, 2004, the maximum WBA is frozen at \$496; and ■ From July 1, 2004, through June 30, 2010, the growth rate in the maximum WBA is capped at 4%. 	<p>Section 11 – Reduces the maximum weekly benefit amount to \$496 or 63% of the state average weekly wage, whichever is greater.</p> <p>Applicable – January 4, 2004.</p>
Maximum Benefits Payable (Duration)	<p>RCW 50.20.120 – Provides that the total amount of benefits potentially payable is the lesser of 30 times the weekly benefit amount, or 1/3 of the total gross wages in all four quarters of the base year.</p>	<p>Section 11 – Reduces the maximum benefit payable to the lesser of 26 times the weekly benefit amount or 1/3 of the total gross wages in all four quarters of the base year.</p> <p>Applicable – After state unemployment rate is 6.8% or less.</p>
Individual Weekly Benefit Amount	<p>RCW 50.20.120 – Provides that an individual's weekly benefit amount is one twenty-fifth [4.0%] of the average of the individual's wages in the <u>two quarters</u> of the base year in which wages were highest.</p>	<p>Section 11 -- Modifies the formula for calculating an individual's weekly benefit amount as follows:</p> <ul style="list-style-type: none"> • For claims with an effective date on and after January 4, 2004, and before January 2, 2005, the WBA is based on the <u>three quarters</u> of the base year in which wages were highest. • For claims with an effective date on and after January 2, 2005, the WBA is based on the <u>total wages</u> in the base year.

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FINANCING		
Qualified Employers	<p>RCW 50.29.025 – Determines contributions based on:</p> <ul style="list-style-type: none"> • The tax schedule in effect (AA through F depending on the balance in the trust fund); and • An employer's placement, in order of benefit ratios, in an array with 20 rate classes, each having 5% of payroll. <p>The system is experience rated, but several factors result in some costs being socialized to all employers:</p> <ul style="list-style-type: none"> • Some benefits are not charged to employer's experience rating accounts by statute. • Some employers pay at contribution rates that are lower than their benefit ratios. • Benefits cannot be charged to employers whose accounts are closed because of bankruptcy or other similar factors. 	<p>Section 14 – Creates a new tax array with 40 rate classes. Employers are assigned one of the 40 rate classes based on the employer's benefit ratio. Qualified employer rates are the sum of two separate rates:</p> <ul style="list-style-type: none"> • The <u>array calculation factor</u> rate is determined by the rate class and ranges from 0.0% in rate class 1 to 5.4% in rate class 40. • The <u>graduated social cost factor</u> rate is determined by calculating the flat social cost factor rate and providing for a graduated social cost factor that ranges from 78% to 120% of the flat social cost factor depending on the rate class. • The <u>sum</u> of the array calculation factor rate and the graduated social cost factor rate may not exceed <u>6.0%</u> for <u>certain seasonal industries</u> (fishing, agriculture, and food processing). • The <u>sum</u> of the array calculation factor rate and the graduated social cost factor rate may not exceed <u>6.5%</u> for <u>other industries</u>. <p>Section 16 -- Adds a solvency surcharge of up to 0.2% and repeals the insolvency surcharge enacted in 2002.</p> <p>Applicable – January 1, 2005.</p>

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Nonqualified Employers	<p>RCW 50.29.025 – Provides that employers with less than two years experience or who are delinquent in paying contributions are not qualified to be in the array.</p> <ul style="list-style-type: none"> • For new employers, the contribution rate is the industry average rate, but not less than 1%. • For delinquent employers, the contribution rate is 5.6%. 	<p>Section 14 – Provides that the contribution rate of an employer not qualified to be in the array is the sum of two separate factors:</p> <ul style="list-style-type: none"> ■ For new employers, the array calculation factor is the average industry rate plus 15%, but not more than 5.4% (the rate in rate class 40). The graduated social cost rate is the average industry rate plus 15%, but not more than the rate assigned to rate class 40. ■ For delinquent employers, the array calculation factor rate is 5.6% (two-tenths higher than the rate in rate class 40) and the graduated social cost rate is the same rate as the rate assigned to rate class 40. <p>Applicable – January 1, 2005.</p>
Successor Employers	<p>RCW 50.29.062 – Provides that, until qualifying in its own right, a successor employer pays contributions at the lower rate of the rate of the predecessor employer's rate class or the new employer rate.</p>	<p>Section 18 – Provides that a successor employer who has substantial continuity of ownership and management of the predecessor's business is not permitted to use the new employer rate. Instead, such a successor employer must pay at the rate assigned to the predecessor employer, and will have the experience of the predecessor employer transferred to the successor as part of its array calculation factor rate beginning in January following the transfer.</p> <p>Applicable – January 1, 2005.</p>

	BEFORE 2ESB 6097	AS AMENDED BY 2ESB 6097
Taxable Wage Base	<p>RCW 50.04.355 – Caps the taxable wage base at 80% of the average annual wage.</p> <p>Specifies that "wages", for purposes of the taxable wage base, are determined by averaging wage data from the three years prior to the calculation.</p>	<p>Section 15 – Specifies that "wages" are determined based on wage data from the previous year (rather than by averaging wage data from the three years prior to the calculation).</p> <p>Applicable - January 1, 2007.</p>
Experience Rating and Noncharging	<p>RCW 50.29.020 – Requires that benefits paid to claimants be charged pro rata to the experience rating accounts of all base year employers, unless there is a statutory exemption.</p> <p>Specifies that certain benefits are not charged, including benefits paid to claimants found to be marginally attached to the labor force.</p>	<p>Section 21 – Specifies that benefits paid to claimants who separated from employment for the following reasons be charged to the experience rating account of only the separating employer:</p> <ul style="list-style-type: none"> • Leave to accept other work <p style="text-align: right;">or</p> <ul style="list-style-type: none"> • Change in work site that causes increased distance or difficulty of travel • Deterioration of work site safety • Illegal activities in the worksite • Change in usual work that violates the individual's religious convictions or sincere beliefs. <p>Sections 21 and 35 -- Eliminates the identification of, and noncharging of benefits paid to, claimants who are marginally attached to the labor force.</p> <p>Applicable -- January 4, 2004.</p>

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Penalties	<p>RCW 50.12.220 - Penalizes an employer who fails to file a timely and complete quarterly unemployment tax report a minimum penalty of \$10 per violation.</p> <p>Assesses specified penalties as a percent of the amount that is delinquent for the first, second, and third month of delinquency.</p>	<p>Section 22 -- Establishes the following penalties for certain employer delinquencies and/or misrepresentations:</p> <ul style="list-style-type: none"> • If quarterly tax reports are not timely or complete, the penalty is \$250 or 10% of the contributions, whichever is less. • If there is a knowing misrepresentation of payroll, the penalty is 10 times the amount of the difference in contributions that were paid and that should have been paid, and audit costs. • If the delinquency is due to an intent to evade the successorship provisions, the penalty is the assignment of the maximum tax rate for 5 quarters. <p>Effective - Immediately.</p>

	BEFORE 2ESB 6097	AS AMENDED BY 2ESB 6097
ADMINISTRATION		
Uses of Funds	RCW 50.16.014, .015, and .190 – Specifies that the unemployment trust fund may not be used for purposes other than paying benefits and repaying federal loans.	Sections 23 - 25 – Specifies that various funds in the unemployment insurance system must be used solely for unemployment insurance purposes. Effective - Immediately.
Studies	Not applicable.	Section 29 -- Requires the Department to conduct the studies specified below, and report to the Legislature its findings and recommendations by December 1, 2003: <ul style="list-style-type: none"> • In consultation with a business-labor advisory committee, identify programs funded with special administrative contributions. • Conduct a review of employer turnover in the unemployment compensation system. • Conduct a study of the potential for year to year volatility in the rate classes to which employers are assigned. Effective -- Immediately.
Appropriation	Not applicable.	SB 6099 - Appropriates \$11.5 million from Reed Act funds to implement 2ESB 6097.

Prepared By: Jill Reinmuth (786-7134)
Office of Program Research

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